

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of
Distribution of the 1999 and
2000 Satellite Royalty Funds

Docket No.

2008-5 CLBSD
99-00

In the Matter of
Distribution of the 2001,
2002 and 2003 Satellite
Royalty Funds

Docket No. 2005-2 CRB
SD 2001-2003

INDEPENDENT PRODUCERS GROUP RESPONSE TO REPLY BRIEF OF PHASE I
PARTIES IN SUPPORT OF "PHASE I PARTIES' NOTICE OF PHASE I
SETTLEMENT AND MOTION FOR FURTHER DISTRIBUTION"

Under normal circumstances, no response is required to a reply brief. Issues are sufficiently vetted, and additional comment is not required. However, the moving parties' reply brief asserts knowing misstatements that could have influence on the determination of the Copyright Royalty Board, and raises issues of such profound importance to the Phase I/Phase II process, that additional briefing is warranted.

ARGUMENT

A. The Moving Parties' Reply Brief contains materially false assertions.

By the admission of the moving claimants, the noticed Phase I "settlement" settles claims to over \$400 Million. By the admission of the moving claimants, IPG was provided a mere five hours to review the proposed settlement and provide any comments. Notwithstanding, the moving parties assert that:

"IPG's requests for clarification and further information (including the confidential shares agreed to by Devotional Claimants in prior satellite partial settlements) were promptly met"

Such assertion is patently false. Basic inquiries such as "has there been any analysis to rationalize such appropriation to the devotional category" were met with the dismissive response that "this is confidential". The basic inquiry as to whether the devotionals that were party to prior partial settlements have self-distributed royalties only to themselves, rather than deposit such royalties into an account reserved for the category of claimants, was responded to with "this is confidential." IPG received absolutely zero substantive information regarding the basis for the settlement, or dollar amount of the settlement - - simply empty reassurances that IPG should agree thereto, coupled with the devotionals' refusal to support (or even agreement not to oppose) IPG's request for a partial distribution if the settlement were accepted, in order that IPG receive an advance distribution in the identical manner as each and every one of the devotionals signing on to the proposed settlement.

Moreover, while the moving parties inform the CRB that "as a matter of public policy and fairness, resolution of copyright royalty disputes by settlement rather than by litigated proceedings should be encouraged", their actions reflect otherwise. As in multiple other occasions, the moving parties, as a group, have sought to exclude IPG from any negotiations, and force IPG to litigate. This is their prerogative. However, it is not the moving parties' prerogative to hypocritically assert that they have attempted to substantively engage in settlement or, as in this instance, falsely assert that all Phase I parties have actually settled.

B. The Proposed Solution of the Moving Parties - - "Ignore IPG'S Phase I Claim Until a Phase II Proceeding has concluded" - - logically fails.

The moving parties' assert that IPG's Phase I claims should be ignored because IPG has not previously participated in any Phase I or Phase II satellite proceedings. However, the moving parties' own brief acknowledges that there have been no satellite proceedings. The moving parties' brief asserts that until IPG has established the validity of its claims within its category, in a litigated proceeding, it should not be allowed to participate in a Phase I proceeding. Taken to its logical end, must a party such as IPG, which assertedly holds more than a 50% interest in the devotional category since 1998, accept the

determination of minority interest holders for all Phase I pools that the minority holders can settle before IPG is given the opportunity to establish its 1998 Phase II interest? Must a majority interest holder tacitly accept the determination of parties with vastly smaller interests for, perhaps, ten years? By the time a litigated Phase II proceeding occurs, IPG's opportunity to address the Phase I devotional claims of the prior fifteen years may have passed. The failings of this proposal are obvious.

Contrary to the suggestion of the moving parties, IPG has previously settled its Phase II devotional claims for both cable and satellite proceedings. Such settlements occurred when certain of IPG's more valuable properties were not yet part of its catalogue, and the settlements are contractually confidential. However, if the parties thereto will consent to a request by the CRB, IPG will gladly consent to waive such confidentiality in order that IPG may substantiate its assertion that it is the majority interest holder in the devotional category.

C. The criminal conviction of a former IPG principal is irrelevant to this matter.

Finally, as to the moving parties' reference to Raul Galaz, the moving parties conveniently omit the fact that Raul Galaz's conviction did not involve IPG or its activities, and that his "materially false sworn testimony" was his uttering a denial of having committed a crime outside and unrelated to the proceeding

with which he was involved.

The sole purpose of the moving parties' reference is to besmirch IPG. There is no legitimate concern regarding IPG's claims and, as noted, IPG has already settled multiple Phase II devotional proceedings without incident or stated concern regarding the validity of its claims.

CONCLUSION

The effort that has been expended at excluding IPG from any substantive involvement, and fielding predictable challenges by IPG to forced settlements, exceeds the effort required to simply involve IPG. More to the point, IPG has yet to receive any contact from any of the moving parties following the filing of its opposition brief. Such actions bely a motive anterior to the moving parties' stated desire to "encourage settlements".

The vast majority of "devotional" claimants that are party to the Phase I settlement filed their first claims only recently, years after the filing of IPG's initial claims, for which IPG patiently awaits an opportunity to present its case for royalties. IPG reiterates that no authority was given to the ostensible signatory to the devotional category, to represent IPG.

IPG submits that no Phase I settlement has occurred, at least with regard to the Devotional Claimants category, and that the reservation of at least 2% of the satellite proceedings funds, together with Phase I Claimants' pledges to return any amounts finally awarded in excess of sums partially released, is

deemed sufficient to protect the interests of devotional programming claimants.

Respectfully submitted,

Dated: December __, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of December, 2008, a copy of the foregoing "Independent Producers Group Response to Reply Brief of Phase I Parties in Support of 'Phase I Parties' Notice of Phase I Settlement and Motion for Further Distribution'" was sent by overnight Express Mail to the parties listed on the attached Service List.

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